

Mr. Barker
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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195007

DATE: July 15, 1980

ACC 90033

MATTER OF: [Availability of Interior's Departmental Management Appropriation] for certain activities authorized by Public Laws 95-617, 95-632, and 93-531

DIGEST:

- 1) Department of Interior may use 1979 Departmental Management appropriation to perform duties imposed upon Secretary by Title V of the Public Utility Regulatory Policies Act of 1978 even though Title V became law after Congress had enacted the appropriation. Existing department appropriations which generally cover types of expenditure involved are available to defray expenses of additional duties imposed by law so long as duties bear sufficient relationship to the purposes for which appropriation was made. Secretary's Title V duties may be considered as necessary expenses of his office.
- 2) Department of Interior 1979 Departmental Management appropriation is available to pay Endangered Species Committee and Review Board fiscal year 1979 support costs even though Congress enacted statute, creating committee and board, after it had made appropriation. Existing department appropriations which generally cover type of expenditure involved are available to defray expenses of additional duties imposed by law so long as duties bear sufficient relationship to purposes for which appropriation was made.
- 3) Public Law 93-531, which created Navajo and Hopi Indian Relocation Commission expressly provided that Department of Interior furnish "on a nonreimbursable basis, necessary administrative and housekeeping services for the Commission." Department of Interior Departmental Management appropriation is available for housekeeping and administrative expenses of Commission even though Congress enacted appropriation prior to statute establishing Commission. Existing department appropriations which generally cover type of expenditure involved are available to defray expenses of additional duties so long as duties imposed by new law bear sufficient relationship to purposes for which appropriation was made.

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4) Statute establishing Navajo and Hopi Indian Relocation Commission (Public Law 93-531) provides that, "The Department of Interior shall furnish, on a nonreimbursable basis, necessary administrative and housekeeping services for the Commission." Department funds are available for Commission's administrative and housekeeping expenses notwithstanding inconsistent budget justifications or memorandum of agreement between Interior and the Commission. Budget justifications do not supersede express statutory provisions.

Dennis J. Hubscher, Financial Manager and Authorized Certifying Officer, Department of the Interior, asks whether funds appropriated under the heading "Departmental Management" for necessary expenses of the Office of the Secretary of the Interior (Pub. L. No. 95-465, 92 Stat. 1279, 1290) for fiscal year 1979, are available for certain administrative, logistical, and support activities authorized by Title V of the Public Utility Regulatory Policies Act of 1978 (Pub. L. No. 95-617, 92 Stat. 3117, 3157-3165, classified to 43 U.S.C. §§2001 et seq.); by section 3 of the Endangered Species Amendments of 1978 (Pub. L. No. 95-632, 92 Stat. 3751, 3752, 16 U.S.C. § 1536, amending section 7 of the Endangered Species Act of 1973); and by section 12(h) of the Act of December 22, 1974, Pub. L. No. 93-531, 88 Stat. 1712, 1717.

The Department of the Interior may use its Departmental Management appropriation to conduct the activities in question under all three statutes.

Title V of the Public Utilities Regulatory Policies Act of 1978

The Public Utility Regulatory Policies Act of 1978 (Act) is one of the five statutes which Congress enacted to meet a national energy crisis. At the time Title V of the Act was enacted, Congress had determined that there might soon be a shortage of crude oil in the northern tier and inland states while there was a surplus of crude oil in the western coastal states. Pub. L. No. 95-617 § 501, 92 Stat. 3157 (1978) (classified to 43 U.S.C. § 2001). Congress therefore declared that west-to-east crude oil delivery systems were needed and that it was of the utmost priority that Federal and State decisions concerning such systems be made expeditiously. Id. Title V provides for expediting Government action required for the construction and operation of crude oil transportation systems and assures that Federal and State decisions concerning delivery systems are coordinated. Id. §502.

Under Title V, the Secretary of the Interior is responsible for coordinating Government action on crude oil delivery systems applications under sections 504 and 505 of Title V, and for overseeing generally the processing of applications.

Title V was not law when Congress considered the fiscal year 1979 Interior Department appropriation and therefore the Department's 1979 budget justifi-

cation does not mention the Secretary's new Title V responsibilities. Section 512 of the Public Utility Regulatory Policies Act of 1978 authorizes \$1,000,000 to be appropriated to the Secretary for fiscal year 1979 for him to carry out his Title V responsibilities. Congress has not passed an appropriation expressly pursuant to that authorization.

Interior suggests that the Departmental Management appropriation would be available to fund the Secretary's Title V responsibilities. We agree with the Department. Existing department and agency appropriations which generally cover the type of expenditures involved are available to defray the expenses of additional duties imposed by proper legal authority. 10 Comp. Gen. 453 (1931); 15 Comp. Gen. 167 (1935); 32 Comp. Gen. 347 (1953); 46 Comp. Gen. 604 (1967); see also 30 Comp. Gen. 205 (1950). The test for availability is whether the duties imposed by the new law bear a sufficient relationship to the purposes for which the appropriation previously enacted was made so as to justify the use of that appropriation for the new duties. See 54 Comp. Gen. 1093 (1975); 46 Comp. Gen. 604 (1967).

The Departmental Management appropriation reads as follows:

"For necessary expenses of the Office of the Secretary of the Interior, including necessary expenses for certain operations that provide departmentwide services, \$42,200,000 ***"

The Secretary's Title V duties may be considered as necessary expenses of his office and therefore fall within one of the purposes for which the Departmental Management appropriation is available.

Section 3 of the Endangered Species Act Amendments of 1978

As in the case of Title V of the Public Utilities Act, the Congress enacted the Endangered Species Act Amendments (Amendments) after it had passed the Departmental Management appropriation. The principle stated above, that existing appropriations may be used to defray the expenses of additional agency duties so long as they bear a sufficient relationship to the appropriation's purpose, is applicable to make the Departmental Management appropriation available to fund the Secretary's activities under section 3 of the Amendments.

Section 3 of the Endangered Species Act Amendments of 1978 amends section 7 of the Endangered Species Act of 1973. The 1973 Act established a program for the conservation of endangered and threatened species of fish, wildlife, and plants. Section 7, as originally enacted, required Federal agencies, in cooperation with the Secretary of Interior, to insure

that their actions did not jeopardize endangered or threatened species. The amendment made it clear that Federal agencies must consult with the Secretary to insure that their activities do not harm threatened or endangered species. H.R. Rep. No. 1804, 95th Cong., 2nd Sess., 18 (1978). Congress also added provisions intended to improve the consultation process. Id.

The amendment also establishes a procedure for exempting Federal agencies from the mandate in section 7 that they not jeopardize the continued existence of any endangered or threatened species or adversely modify the critical habitat of such species. H.R. Rep. No. 1625, 95th Cong., 2nd Sess. 3 (1978). The amendment created a review board which screens applications for exemptions and then submits a report to an Endangered Species Committee for a final determination. The Secretary submits his views and recommendations concerning the application to the Review Board. Board members who are full-time Government officers or employees receive no additional pay for Board service. Other members are entitled to pay for each day during which they are actually performing Board duties. All members are allowed travel expenses. The Amendment authorizes other agencies to detail personnel to assist the Board on a nonreimbursable basis, and it authorizes the General Services Administration (GSA) to provide administrative support services to the Board on a reimbursable basis. An administrative law judge detailed by the Office of Personnel Management is to serve on the Board on a reimbursable basis.

Section 7(e)(1) establishes the Endangered Species Committee. The Committee scrutinizes review board reports and rules on applications by agencies for exemptions from the requirements of the Act. The Secretary of the Interior serves as the Chairman of the Committee. Members receive no pay, but are allowed travel expenses. As in the case of the Review Board, the Committee may use personnel detailed from other agencies to assist it on a nonreimbursable basis in carrying out its duties and GSA supplies administrative support on a reimbursable basis.

Finally, subsection (9), added by the 1978 amendment, authorizes the appropriation to the Secretary -

****to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed \$600,000 for the fiscal year 1979, and not to exceed \$300,000 for the period beginning October 1, 1979, and ending March 31, 1980".

Mr. Hubscher, referring to the activities authorized under section 3, states:

"Funding for this responsibility was not specifically sought or justified in the original budget request from the Office of the Secretary.

However, a request for a supplemental appropriation was submitted to the Congress in early 1979 as a separate activity (copy attached). It is likely that favorable consideration may not occur on the supplemental. However, sufficient funds are available within the Policy Analysis activity of the Departmental Management appropriation and direction was received to incur initial support costs (salary, travel, and other miscellaneous expenses) under that activity."

We understand from Mr. Hubscher that the Secretary has decided to use the Department's Office of Policy Analysis to coordinate his responsibilities under the amendment.

Mr. Hubscher is not seeking a decision as to the proper source of funding for the Secretary's own activities under the Amendments. Rather, he is concerned about the source for the funding of the reimbursable support costs of the Endangered Species Committee and the Review Board. We agree that the Departmental Management appropriation is a proper source for initial Endangered Species Committee and Review Board support expenses incurred during fiscal 1979. As Mr. Hubscher points out, the Congress could not have considered such support expenses when formulating the fiscal year 1979 appropriation for the Departmental Management Operations because it had not yet enacted the Endangered Species Act amendments. However, the amendments had been enacted by the time the Congress considered the 1980 Interior Department appropriation. The legislative history of that Act indicates that Congress intended that the Endangered Species Committee and Review Board support costs for 1980 be paid out of the Departmental Management appropriation for that year, the wording of which is virtually identical to that of the corresponding 1979 appropriation. Pub. L. No. 96-126, 93 Stat. 966; S. Rep. No. 363, 96th Cong., 1st Sess. 61 (1979); Department of Interior and Related Agencies Appropriations for 1980: Hearings on H.R. 4930 Before a Subcommittee of the Committee on Appropriations, House of Representatives, 96th Congress 1st session, 2038. Thus, Congress has now made the Departmental Management appropriation available for the purpose of providing support costs to the Committee and the Review Board.

Section 12(h) of Public Law 93-531, Navajo and Hopi Indian Relocation Commission

Section 12 of Public Law 93-531 establishes the Navajo and Hopi Indian Relocation Commission, composed of three members appointed by the Secretary of the Interior. The Commission relocates Navajo and Hopi Indians in order to settle land disputes between the two tribes. The proper source for payment of the Commission's administrative and housekeeping expenses is in question because of what Mr. Hubscher suggests may be inconsistencies among the Commission's authorizing statute, the provisions of a written agreement between the Commission and Interior, and the Commission's budget justification for fiscal year 1979.

Subsection (h) of Section 12 expressly provides:

"The Department of the Interior shall furnish, on a nonreimbursable basis, necessary administrative and housekeeping services for the Commission." (Emphasis added.)

However, in February 1977, the Commission agreed to advance funds annually to cover the cost to Interior of providing specified administrative and housekeeping services. The agreement states in effect, that Interior will provide budget, financial, personnel, procurement, property management, other general services, and services related to funding and position control.

The Commission's fiscal year 1979 budget justification contains an entry for funds "to underwrite all overhead/support requirements of the Commission." (The Commission has said that these items were erroneously included.) Subsequently, the Congress appropriated funds for the Commission's fiscal year 1979 expenses. Pub. L. No. 95-465, 92 Stat. 1279, 1297 (1978).

The Office of the Secretary of the Interior provided the services listed in the Memorandum of Understanding, although that Office's budget justification did not seek funding for that purpose. "Rather," Mr. Hubscher tell us, "Interior relied upon the Memorandum of Understanding and established procedures under its Working Capital Fund (NAF), 14X4523, to fund this responsibility on a reimbursable basis." However, the Commission has not in fact paid Interior for the services. Mr. Hubscher explains:

"In lieu of seeking reimbursement from the NHIRC, and in recognition of the inconsistencies noted in the foregoing with regard to the authorization and appropriation actions, the budget requests, and the Memorandum of Understanding, it is nevertheless felt that the Departmental Management appropriation is sufficiently broad enough in its general purpose to permit the incurrence of expenses for NHIRC administrative and housekeeping support services."

Section 12(h) of Public Law 93-531 expressly requires that Interior bear the expenses of these services, as noted earlier. Mr. Hubscher informs us that the Departmental Management appropriation funds the administrative and housekeeping services to the Office of the Secretary of the Interior. Since we are not aware of any applicable statutory limitation or prohibition, we agree that Interior may use the Departmental Management appropriation to fulfill its statutory obligation to provide the Commission's administrative and housekeeping services. As with the two situations discussed above, the Departmental Management appropriation covers the types of expenditures made necessary by the additional duty imposed on Interior by section 12(h).

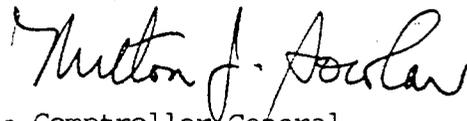
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We attach little significance to the request by the Commission for funds for this purpose, which the Commission concedes was erroneous or, conversely, to Interior's omission of a specific request for funds for this purpose. The budget justifications do not supersede the provisions of subsection 12(h), an enacted statute, and hence do not affect the Department's duty under subsection 12(h) to provide administrative and housekeeping services to the Commission on a nonreimbursable basis. Generally speaking, budget justifications are no more than an agency's statement of its anticipated financial needs which it presents to the Congress for consideration.

An agency is not legally required to spend funds strictly in accordance with the terms of its budget justification or estimate unless the terms of the justification or estimate are expressly incorporated into the appropriation act itself. 17 Comp. Gen. 147. As a corollary, unless otherwise provided, an agency may use an appropriation to carry out an activity not mentioned at all in its budget justification or estimate so long as the activity is consistent with the appropriation's purpose. B-149163, June 27, 1962.

Thus, Interior may use its Departmental Management appropriation to pay for the Commission's administrative and housekeeping expenses even though the Department's budget justification did not list an amount for them.

We also note that the memorandum of agreement which requires the Commission, and not the Interior Department, to bear the cost of the Commission's administrative and housekeeping expenses, is not consistent with the law, as discussed above. Therefore, it presents no obstacle to use of Interior's appropriation for Departmental Management for these expenses.



For The Comptroller General
of the United States